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REDACTED – FOR PUBLIC INSPECTION

July 11, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W. , Fifth Floor
Washington, DC 20554

Re: CC Docket No. 01-138

Dear Ms. Salas:

Enclosed for filing are (a) one original of the unredacted Opposition of Network Access Solutions ("Opposition") and (b) one original and two copies of the redacted Opposition.

Sincerely,

Rodney L. Joyce
Counsel for Network Access Solutions Corp.

Attachments

REDACTED – FOR PUBLIC INSPECTION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Application By Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region InterLATA Services in Pennsylvania	)	CC Docket No. 01-138

OPPOSITION OF NETWORK ACCESS SOLUTIONS

Network Access Solutions ("NAS") opposes grant of the application by Verizon-Pennsylvania ("Verizon-PA") to provide interLATA service in Pennsylvania. NAS is a CLEC using DSL technology to provide high speed data transmission service to small and mid-sized businesses in the Philadelphia and Pittsburgh MSAs. The service permits NAS customers to transmit and receive data at speeds up to 2.3 megabits per second.

DISCUSSION

The Commission should deny the Verizon-PA application for three reasons. Each is discussed below.

A. Poor DSL Loop Quality (PR-6-01)

The first factor justifying denial of the Verizon-PA application is the poor quality of the DSL loops it installs for CLECs. The FCC uses Verizon's PR-6-01 metric to measure DSL loop quality.[1] PR-6-01 measures loop quality by calculating the percentage of new loop installations on which trouble reports ("I-Codes") are submitted within 30 days of installation.

[1] See, e.g., *Applic. of Verizon New Eng. Inc.* at ¶ 142 (FCC 01-130, rel. Ap. 16, 2001) ("Mass. Order").

According to Verizon-PA, CLECs submitted I-Codes between February 1 and April 30, 2001 on about six percent of the DSL loops that Verizon-PA had installed within the previous 30 days. While the Pennsylvania Commission found that the quality of "digital loops" is satisfactory in Pennsylvania, it made no conclusion about (and indeed did not even discuss) the quality of Verizon-PA's DSL loops.[2] Digital loops and DSL loops are different products.

The FCC should hold that the quality of DSL loops provided by Verizon-PA is unsatisfactory for three reasons. First, while the six percent I-Code rate that Verizon-PA reports is less than the seven percent I-Code rate that the FCC found "minimally acceptable" in Massachusetts, Verizon-PA's actual I-Code rate is probably significantly higher than six percent since the company calculated the I-Code rate by excluding I-Codes reported by CLECs who do not engage in loop acceptance testing.[3] The FCC has ruled that the I-Code rate should not be calculated in this manner because doing so creates the impression of a lower I-Code rate than actually exists.[4] Moreover, the New York Carrier-to-Carrier Working Group decided in March that I-Codes submitted by all CLECs should be included in calculating Verizon-NY's performance under PR-6-01 as Verizon-PA acknowledges.[5]

DSL loop quality also is unsatisfactory in Pennsylvania because, unlike in Massachusetts, Verizon-PA's performance is not improving. The FCC found a seven percent I-

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2 Consultative Report of the Pa. Pub. Util. Comm. at 159 , filed in Dkt. No. 01-138 on June 25, 2001.

3 *See Guerard/Canny/DeVito Decl.* at 40-41 (¶ 89). *See also Lacouture/Ruesterholz Decl.*, Att.43 at 2 (stating that Verizon's calculation of the percentage of new DSL loop installations that are subject to I-Codes "[o]nly includes [I-Codes submitted by] CLECs who cooperatively test with Verizon").

4 *Mass. Order, supra*, at ¶ 146 n.456 (excluding I-Codes submitted by carriers that do not participate in acceptance testing from the PR-6-01 calculation results "in inappropriately low trouble report rates").

5 Applic. at 30 n.31.

Code rate minimally acceptable in Massachusetts only because I-Code reports in that state had been declining steadily.[6] In Pennsylvania, by contrast, the percentage of DSL loops experiencing trouble within 30 days of installation has fluctuated between about 6 percent and 7.5 percent in five of the six months upon which Verizon-PA relies, even when the company's actual I-Code rate is understated as discussed above:

Month	Percentage of Installation Trouble Reports by CLECs on DSL Loops Within 30 Days of Installation (PR-6-01)[7]
November	5.96%
December	6.04%
January	6.86%
February	7.48%
March	6.65%
April	4.27%

This is hardly the sort of steady improvement that permitted the FCC to find Verizon-MA's I-Code rate "marginally acceptable."

The final reason that the FCC should hold DSL loop quality to be unsatisfactory in Pennsylvania is because it appears that Verizon-PA has not implemented some important process improvements that were mandated in the Mass. Order. There, the FCC ordered Verizon ILECs, among other things, to instruct the company's DSL loop installers to (i) conduct cooperative testing on all DSL loops at the NID and (ii) remove half ringers on all DSL loops at the time they are installed.[8] In mandating these process changes, the FCC made clear that

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6 *Mass. Order* at ¶ 148.

7 Performance data for November, January, February, March and April comes from the monthly Carrier-to-Carrier Reports filed with the Pennsylvania Public Utility Commission. December data comes from the Performance Report filed with the FCC pursuant to the GTE/Verizon merger order since NAS could not locate Verizon-PA's Carrier-to-Carrier Report for December.

8 *Mass. Order* at ¶ 147n.461 and ¶ 148.

Verizon-MA's seven percent I-Code rate would be unacceptable (despite steady improvement in the most recent months) if the company had not agreed to implement each of these changes promptly. Based on NAS's experience, it is clear that Verizon-PA has not implemented the requirement to engage in cooperative testing of all loops at the NID. The following chart shows the percentage of new DSL loop installations during each of the last several months that Verizon-PA never cooperatively tested from any location because of the negligent failure by Verizon-PA central office technicians to have connected the loops in the central office by the time cooperative testing was to have occurred:

Month	Percentage of NAS Loops Installations that Verizon-PA Failed to Cooperatively Test Because Loop Was Open in CO
December	[redacted]%
January	[redacted]%
February	[redacted]%
March	[redacted]%
April	[redacted]%
May	[redacted]%

As the chart shows plainly, the percentage of DSL loops that are never cooperatively tested from any location as a result of Verizon-PA's negligence is large and is not improving.

Similarly, while the FCC instructed Verizon ILECs in the Mass. Order to remove half ringers from all DSL loops at the time of installation, KPMG's finding that Verizon-PA's procedures require removal of half-ringers only for certain types of DSL loop installations confirms that Verizon-PA has failed to implement this requirement.[9]

[9] *See Consultative Report of the Pa. Pub. Util. Comm., supra*, at 140.

B. Untimely Installation of DSL Loops (PR-2-02)

Verizon-PA's application also should be denied because the company fails to install DSL loops within a reasonable interval. PR-2-02 measures the number of business days it takes Verizon-PA to install a DSL loop. The company is supposed to install these loops within six business days, and it claims that between February and April it did so in 5.87 business days on average for all CLECs combined[10] and [redacted] for NAS.[11] In fact, Verizon appears to have misrepresented its actual installation performance based on NAS's experience. Attached as Att.1 is a chart showing each DSL loop that NAS ordered in April and May of this year along with the installation date. Rather than install these loops within the standard six day interval, the chart shows that it took Verizon-PA [redacted] on average to install each loop. This is [redacted] longer than the 7.3 day interval that the FCC found acceptable in Massachusetts and more than [redacted] business days longer than the [redacted] day interval that Verizon-PA reports for NAS. If Verizon-PA has understated the installation interval for NAS, it most likely has understated the installation interval for all other CLECs too, thereby calling into question its claim that it installs DSL loops for CLECs within six business days.

Nor is either factor that caused the FCC to excuse the otherwise unacceptable installation interval in Massachusetts present in Pennsylvania. First, the agency excused the 7.3 day installation interval in Massachusetts since it occurred during a period in which installations had been unavoidably delayed due to a three week long strike by Verizon installers.[12] By

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10 *Lacouture/Ruesterholz Decl.* at ¶ 171.

11 The [redacted] day figure for NAS is the weighted average installation interval for February and March combined. Despite three requests from NAS's counsel, Verizon-PA has not provided a report showing Verizon-PA's performance to NAS in April.

12 *Mass. Order* at ¶ 139 and 139n.434.

contrast, the [redacted] installation interval for NAS in Pennsylvania occurred during a period when all Verizon installers were available for work. Second, the fact that the installation interval in Massachusetts was just 0.4 days longer than the 6.94 business days it took Verzon-MA to install POTS loops requiring dispatch for its retail customers also gave the FCC comfort.[13] In Pennsylvania, by contrast, the [redacted] installation interval for NAS is [redacted] the 4.42 day installation interval in which Verizon-PA installs POTS loops for its own retail customers.[14]

C. Untimely Provisioning of High-Capacity Loops (PR-4-01)

Finally, the Commission should reject the Verizon-PA application because the company discriminates against CLECs by failing to install high-capacity loops in a timely manner. The FCC uses Verizon's PR-4-01 metric to determine whether the company installs high-capacity loops in a timely manner.[15] According to Verizon-PA's calculations, the company missed appointments to install high-capacity loops for CLEC customers more than 34 percent of the time between February and April of this year.[16] By contrast, Verizon-PA missed high-capacity loop installation appointments for its retail customers only 2.6 percent of the time.[17] This huge disparity in the missed appointment rate for CLEC customers vs. Verizon-PA retail customers is clearly discriminatory.

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13 *Id.*

14 Verizon-PA installed POTS loops requiring dispatch for its retail customers in 4.31 days in February, 4.41 days in March, and 4.55 days in April. *See* Carrier-to-Carrier Reports, PR-2-03 (Average Interval Completed-Dispatch (1-5 lines) – POTS Loops).

15 *Id.* at ¶ 156.

16 *Lacouture/Ruesterholz Decl.* at Att.31 at 1.

17 *See* Guerard/Canny/DeVito Decl. Att.1 at 11 (75 out of 1507 appointments missed in February); *Id.* at 27 (21 out of 1690 appointments missed in March); *Id.* (8 out of 736 appointments missed in April).

Recognizing that it is unacceptable to miss 34 percent of high-capacity loop installation appointments, Verizon-PA seeks to persuade the FCC to revise the manner in which this statistic is calculated by excluding situations where the appointment is missed because Verizon discovers (usually only a short time before the appointment) that the loop cannot be installed because transmission facilities are not available.[18] But even if this category of missed appointments is excluded, Verizon-PA still plainly discriminates against CLECs since it then would be deemed to have missed installation appointments 12 percent of the time for CLECs compared to 2.6 percent of the time for its retail customers during the February-April period.[19] It obviously is difficult for CLECs to compete if Verizon-PA misses installation appointments nearly five times more often for CLECs than for its retail customers.

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[18] *Lacouture/Ruesterholz Decl.* at 57 (¶¶ 149-50).

[19] *Id.* at ¶ 149.

CONCLUSION

The Commission should deny Verizon-PA's application to provide interLATA service.

Respectfully submitted,

NETWORK ACCESS SOLUTIONS CORP.

By: _____

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July 11, 2001

ATTACHMENT 1

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2001, I mailed, a true and correct copy of the Opposition of Network Access Solutions to:

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